

CRIMINAL YEAR SEMINAR

April 20, 2018 - Tucson, Arizona
May 11, 2018 - Phoenix, Arizona
May 18, 2018 - Chandler, Arizona



CRIMINAL CODE UPDATE

Presented By:

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APAAC Year in Review 2017: The Arizona Criminal Code

Linley Wilson, Unit Chief Counsel, Arizona Attorney General's Office
Judge Michael R. McVey (Ret.), Deputy Chief of the Criminal Group,
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13-105. Definitions

In this title, unless the context otherwise requires:

39. "Serious physical injury" includes physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

13-203. Causal relationship between conduct and result; relationship to mental culpability

A. Conduct is the cause of a result when both of the following exist:

1. But for the conduct the result in question would not have occurred.
2. The relationship between the conduct and result satisfies any additional causal requirements imposed by the statute defining the offense.

State v. Dodd, 2016 WL 6327542 (Ariz. App. 2017)

Issues:

- How extensive must injuries be, to qualify as “serious injuries” under Arizona’s aggravated assault statute (*ARS § 13-1204.A.3*); and
- Can an intervening event relieve a defendant of all criminal responsibility for injuries caused by a course of conduct he set into motion?



13-412. Duress

A. Conduct which would otherwise constitute an offense is justified if a reasonable person would believe that he was compelled to engage in the proscribed conduct by the threat or use of immediate physical force against his person or the person of another which resulted or could result in serious physical injury which a reasonable person in the situation would not have resisted.

B. The defense provided by subsection A is unavailable if the person intentionally, knowingly or recklessly placed himself in a situation in which it was probable that he would be subjected to duress.

C. The defense provided by subsection A is unavailable for offenses involving homicide or serious physical injury.

State v. Richter, 243 Ariz. 131 (App. 2017)
(review granted March 20, 2018)



Issue:

“Whether an abuser’s constant threats of harm over a three-month period can constitute ‘threat or use of immediate physical force’ under A.R.S. § 13–412(A) sufficient to permit the defendant to raise a duress defense to her allegedly ongoing abuse of her children.”

COA holds her proposed testimony and her expert’s proposed testimony—which included a PTSD diagnosis and testimony that Richter was compelled to commit the charged acts because she was subjected to ongoing threats and use of immediate physical force—was relevant and admissible to support a duress defense.



Questions for the AZ Supreme Court:

- Duress in AZ is measured by only an objective standard – would a reasonable person have resisted?
- Subjective, lesser form of duress is a statutory mitigating circumstance for sentencing purposes: A.R.S. 13-701(E)(3) (defendant was under “unusual or substantial duress, although not to a degree that would constitute a defense to prosecution”)
- Note: If the child abuse involved homicide or serious physical injury, duress is unavailable as a matter of law under (C).

13-415. Justification; domestic violence

If there have been past acts of domestic violence as defined in section 13-3601, subsection A against the defendant by the victim, the state of mind of a reasonable person under sections 13-404, 13-405 and 13-406 shall be determined from the perspective of a reasonable person who has been a victim of those past acts of domestic violence.

State v. Richter, 243 Ariz. 131 (Ariz. App. 2017) (review granted)

As noted, duress (unlike self-defense) involves only an objective, reasonable-person standard.



State v. Jacobson, 2017 WL 6523707 (Ariz. App. 2017)

Issue:

Whether a PTSD diagnosis from an expert may be used to prove that "past acts of domestic violence occurred" (committed by the victim against the defendant) to invoke the modified self-defense standard provided under A.R.S. 13-415.



Richter / Jacobson



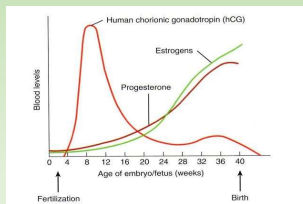
Division 1: "*Richter* does not elaborate under which circumstances a PTSD diagnosis might be admissible in support of a justification defense...We do not interpret *Richter* to mean that a PTSD diagnosis is always admissible as part of a justification defense."

Then concludes the PTSD diagnosis only served to vouch for defendant's credibility and was properly excluded.

Jacobson also clarifies:

On expert testimony regarding hormones in pregnancy:

"Jacobson's pregnancy is not relevant to either the reasonable person standard, or the reasonable victim of domestic violence, but instead is an individual characteristic entitled to **no special consideration.**"



Danger: due to the influence of pregnancy hormones, I could either burst into tears or kill you in the next 5 minutes.

You have been warned...

Peg It Board



13-502. Insanity test; burden of proof; guilty except insane verdict

A. A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. ... Conditions that do not constitute legal insanity include but are not limited to momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

State v. Richter, 243 Ariz. 131 (App. 2017) (review granted)



Issue:

"Whether the court of appeals properly applied the 'observation evidence' exception in *Clark v. Arizona*, 548 U.S. 735 (2006), in the context of a duress defense."

State v. Jacobson, 2017 WL 6523707 (Ariz. App. 2017)



Issue:

Whether PTSD testimony, including what appears to be a diagnosis, is admissible "observational evidence" of a character trait, or whether it is precluded by *Mott*.

Jacobson expressly disagrees with *Richter*.

***State v. Millis*, 242 Ariz. 33 (App. 2017)**

Issue:

Whether a medical expert is permitted to testify that the defendant suffered from autism spectrum disorder to provide evidence of a character trait, or whether this is inadmissible diminished capacity evidence.

13-603. Authorized disposition of offenders

C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court and in the manner as determined by the court or the court's designee pursuant to chapter 8 of this title. Restitution ordered pursuant to this subsection shall be paid to the clerk of the court for disbursement to the victim and is a criminal penalty for the purposes of a federal bankruptcy involving the person convicted of an offense.



State v. Stutler*, 243 Ariz. 128, 402 P. 3d 1013 (App. 2017)**State v. Linares*, 241 Ariz. 416, 388 P. 3d 566 (App. 2017)**

Issues:

- May a victim be awarded restitution for lost earnings from her business, when she decided to stay from the business because of her fear of the defendant; and
- Can a defendant be ordered to pay restitution for the cost of a forensic examination of a child abuse victim?

13-705. Dangerous crimes against children; sentences; definitions

O. A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.

P. For the purposes of this section:

1. "Dangerous crime against children" means any of the following that is committed against a minor who is under fifteen years of age...[lists enumerated crimes].

Wright v. Gates, 243 Ariz. 118, 402 P.3d 1003 (2017)

Issues:

- Whether solicitation to commit child molestation is a second-degree preparatory offense under subsection (O) of the DCAC statute.
- Whether the DCAC sentencing statute applies to offenses when the victim is a fictitious child.

13-711. Consecutive terms of imprisonment

A. Except as otherwise provided by law, if multiple sentences of imprisonment are imposed on a person at the same time, the sentence or sentences imposed by the court **shall run consecutively unless the court expressly directs otherwise**, in which case the court shall set forth on the record the reason for its sentence.

B. Notwithstanding subsection A, if a person is subject to an undischarged term of imprisonment and is sentenced to an additional term of imprisonment for a felony offense that is committed while the person is under the jurisdiction of the state department of corrections, the sentence imposed by the court shall run consecutively to the undischarged term of imprisonment.

State v. Lambright, 243 Ariz. 244, 404 P.3d. 466 (App. 2017)

Issues:

- May a court sentence defendant to a life term, consecutive to sentences imposed on other counts of an indictment; and
- Is defendant entitled to credit for time served while sitting on death row, against a life sentence imposed following the vacating of the death penalty?

13-1304. Kidnapping; classification; consecutive sentence

A. A person commits kidnapping by knowingly restraining another person with the intent to:

1. Hold the victim for ransom, as a shield or hostage; or
2. Hold the victim for involuntary servitude; or
3. Inflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony...



13-1304. Kidnapping; classification; consecutive sentence

B. Kidnapping is a class 2 felony unless the victim is released voluntarily by the defendant without physical injury in a safe place before arrest and before accomplishing any of the further enumerated offenses in subsection A of this section in which case it is a class 4 felony. If the victim is released pursuant to an agreement with the state and without any physical injury, it is a class 3 felony. If the victim is under fifteen years of age kidnapping is a class 2 felony punishable pursuant to section 13-705. The sentence for kidnapping of a victim under fifteen years of age shall run consecutively to any other sentence imposed on the defendant and to any undischarged term of imprisonment of the defendant.

***State v. Scott*, 243 Ariz. 183, 403 P.3d 595
(App. 2017)**

Issue:

May a defendant be convicted of two counts of kidnapping, if after the original kidnapping concluded and the victim broke free momentarily, the defendant again restrained the victim with the requisite intent to commit a sexual offense upon her?

**13-1405. Sexual conduct with a minor;
classification**

A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.

B. Sexual conduct with a minor who is under fifteen years of age is a class 2 felony and is punishable pursuant to section 13-705. Sexual conduct with a minor who is at least fifteen years of age is a class 6 felony. Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is or was in a position of trust and the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed has been served or commuted.

***State v. Gulli*, 242 Ariz. 18, 391 P.3d 1210
(App. 2017)**

Issue:

Is it erroneous for a court to instruct a jury that sexual conduct with a minor includes "sexual contact," and if so, is such an error fundamental?

13-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Contraband" means any dangerous drug, narcotic drug, marijuana, intoxicating liquor of any kind, deadly weapon, dangerous instrument, explosive, **wireless communication device**, multimedia storage device or other article whose use or possession would endanger the safety, security or preservation of order in a correctional facility

13-2505. Promoting prison contraband; exceptions; x-radiation; body scans; classification

A. A person, not otherwise authorized by law, commits promoting prison contraband:

1. By knowingly taking contraband into a correctional facility or the grounds of a correctional facility; or
2. By knowingly conveying contraband to any person confined in a correctional facility; or
3. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility or while being lawfully transported or moved incident to correctional facility confinement.

State v. Francis, 243 Ariz. 434, 410 P.3d 416 (2018)

Issue: Whether the State was required to prove, as an element of the offense of promoting prison contraband, that the defendant knew that the cellphone in his possession was statutorily defined as contraband.



13-3102. Misconduct involving weapons; defenses; classification; definitions

A. A person commits misconduct involving weapons by knowingly:

12. Possessing a **deadly weapon on school grounds**;

I. Subsection A, paragraph 12 of this section shall not apply to the possession of a:

1. Firearm that is not **loaded** and that is carried within a means of transportation under the control of an adult provided that if the adult leaves the means of transportation the firearm shall not be visible from the outside of the means of transportation and the means of transportation shall be locked.

State v. Johnson, 243 Ariz. 41, 401 P.3d 504 (App. 2017)



Issue:

Is a defendant who carries a firearm in a vehicle, onto school grounds, with bullets in its magazine but none in its firing chamber, guilty of violating *ARS §13-3102.A.12*?

13-3551. Definitions

In this chapter, unless the context otherwise requires:

5. "Exploitive exhibition" means the actual or simulated exhibition of the genitals or pubic or rectal areas of any person **for the purpose of sexual stimulation of the viewer**.

13-3553. Sexual exploitation of a minor; evidence; classification

A. A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in **exploitive exhibition** or other sexual conduct.



State v. Chandler, 2017 WL 6350128 (Ariz. App. 2017)

Issue:

Whether A.R.S. 13-3553, which criminalizes sexual exploitation of a minor, requires that the defendant intended photograph to be used for sexual stimulation, rather than that minor intended to sexually stimulate the viewer.

Legislative history: "This bill is in response to a 1994 Arizona Court of Appeals decision which the Arizona Supreme Court declined to review."

15-108. Medical marijuana; school campuses; prohibition; definition

A. In addition to the limitations prescribed in section 36-2802, subsection B, a person, including a cardholder as defined in section 36-2801, may not lawfully possess or use marijuana on the campus of any public university, college, community college or postsecondary educational institution.



State v. Maestas, 242 Ariz. 194, 394 P.3d 21
(App. 2017) (review granted January 9, 2018)

Issue:

Whether the Legislature's criminalization of the possession of medical marijuana on public university campuses, which modifies the Arizona Medical Marijuana Act, violates the Voter Protection Act.